DOCKET FILE COPY ORIGINAL

RECEIVED

JAN 28 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	CC Docket No. 97-149
1997 Annual Access Tariff Filings	)	CCB/CPD 98-1

REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("U S WEST") submits this reply to the Oppositions of AT&T Corp. ("AT&T") and MCI Telecommunications Corporation ("MCI") on the Petitions for Reconsideration filed herein by Bell Atlantic Telephone Companies ("Bell Atlantic") and Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell ("SBC").[1]

THE FEDERAL COMMUNICATIONS COMMISSION ("COMMISSION") SHOULD RECONSIDER ITS ORDER PRESCRIBING THE BASE FACTOR PORTION ("BFP") AND REQUIRING REFUNDS

Reading only the AT&T and MCI Oppositions in this proceeding, one would come away with the impression that the only problem with the price cap local exchange carriers' ("LEC") determination of their carrier common line ("CCL") and end-user common line ("EUCL") charges is the LECs' propensity to underestimate their BFP, thus allocating too much revenue requirement to CCL charges and too

[1] Petitions for Reconsideration filed Dec. 31, 1997. AT&T's and MCI's Oppositions to Petitions for Reconsideration filed Jan. 21, 1998. In the Matter of 1997 Annual Access Tariff Filings, CC Docket No. 97-149, Memorandum Opinion and Order, FCC 97-403 rel. Dec. 1, 1997 ("Order"). Public Notice, Bell Atlantic and the SBC Companies Petition the Commission for Reconsideration in the 1997 Annual Access Tariff Filings, CC Docket No. 97-149, DA 98-16, CCB/CPD 98-1, rel. Jan. 6, 1998.

little to EUCL charges.

But reducing a LEC's CCL charges is not without risk. Because the BFP is used simply to allocate the overall Common Line revenue requirement between interexchange carriers ("IXC") and end users, reducing the CCL requires an increase in EUCL charges. End users may well come forward to advocate that the Commission has allocated too much to the EUCL and too little to the CCL. In particular, multi-line business customers -- who must pay for the CCL reductions ordered by the Commission in this proceeding -- can be expected to challenge the Commission's BFP prescription.

And the multi-line business customers have reason to complain, given the weaknesses in the Commission's prescription. U S WEST's Comments demonstrated that, in light of newly-available information, the Commission's estimate of U S WEST's per line BFP was less accurate than was U S WEST's own forecast.[2] Bell Atlantic's Petition for Reconsideration showed the same result as to its forecast.

Moreover, multi-line business EUCL charges increased in the 1997 Annual Filing. Those charges increased again on January 1, 1998 due to the restructuring brought about by the Access Reform Order[3] and, of course, the Commission-

[2] Comments of U S WEST Communications, Inc. filed herein, Jan. 21, 1998 at 2 ("U S WEST Comments").

[3] In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 7 Comm. Reg. (P&F) 1209 (1997), appeals pending sub nom. Southwestern Bell Telephone Company v. FCC, Nos. 97-2618, et al. (8th Cir.).

prescribed BFP. These same customers will bear the brunt of the new Presubscribed Interexchange Carrier Charge, which most IXCs have elected to pass through to their end users. Overall, these customers have experienced significant rate increases as a result of access reform. Those increases particularly impact multi-line business customers who make relatively few interstate long distance calls; these customers bear all the increases, but see little benefit from the access charge reductions given the IXCs.

The Commission has prescribed U S WEST's BFP for the 1997-98 tariff year. Even though the Commission has suspended the tariffs that took effect on January 1, 1998, customers cannot challenge the rates in those tariffs to the extent they reflect the BFP prescription.

But that will not be the case with the next annual filing. No matter how U S WEST forecasts its BFP there, it can expect challenges from the IXCs, multi-line business end users, or both. Unless the Commission prescribes a method of BFP forecasting,[4] or (preferably) does away with such forecasts altogether, the LECs will always be at risk of having to refund a portion of their Common Line revenues, no matter what they do.

---

[4] U S WEST cannot safely use the autoregression methodology the Commission used to prescribe U S WEST's per line BFP in this proceeding. As U S WEST explained in its Comments (at 23), an autoregression method is suitable for forecasting only in a stable environment, in which the past reasonably predicts the future. That, however, is no longer the case with U S WEST's per line BFP. After steady increases for five years (1991-96) -- the only years considered by the Commission in making its prescription -- U S WEST's per line BFP flattened out in 1997; it had been similarly flat in the two years prior to the five-year period of increases (1989-91).

Regulation should not be a game of "gotcha." Yet, that risk remains so long as BFP forecasts play a significant role in the LECs' ratemaking.

The Commission's prescription in this proceeding demonstrates that risk. As U S WEST explained in its Comments, its actual per line BFP for 1997 showed almost no growth over 1996.[5] For U S WEST's per line BFP to reach the level of the Commission's autoregression forecast for 1997-98 would require per line BFP to grow by a dollar or more during 1998, a virtual impossibility in light of historical BFP growth. The Commission made a good-faith effort to project per line BFP, but we now know that projection was well off the mark.

Forecasts are inherently subject to error. Given that the Commission did no better at it than U S WEST, we believe it erred in prescribing a per line BFP for U S WEST to use in setting its CCL and EUCL rates.

But even if the BFP prescription was not in error, we believe the Commission plainly erred by ordering refunds,[6] particularly without affording the LECs an opportunity to recoup the Common Line revenues they thereby lost. MCI claims the Commission has no authority to permit such "retroactive" rate increases.[7] MCI is wrong.

The Commission can authorize the LECs to recoup the refunded revenues in future rates. That is not prohibited retroactive ratemaking; if it were, a carrier would have no effective recourse in the event a court reverses a Commission

---

[5] Id. at 2 and Attachment 1.

[6] See id. at 3-9.

[7] MCI at 7-8.

disallowance or refund order, or the Commission changes its decision on reconsideration. In any case, the Commission has used the authority of Section 4(i) of the Act to retroactively increase rates that were subject to investigation, typically in "special" circumstances.[8] U S WEST believes this proceeding presents exactly such circumstances. In particular, the Commission here deviated from its consistent prior practice of not challenging LEC BFP forecasts. In any case, the Commission is free to authorize prospective rate increases to recoup the revenue. If the Commission stands by its decision to order refunds -- and we believe it should not -- equity demands that it provide some means for the LECs to recoup the revenue they will thereby lose.[9]

For the reasons stated, the Commission should reconsider its decision to prescribe a per line BFP. In the alternative, the Commission should reconsider its decision to require refunds. If the Commission elects not to reconsider that

---

[8] In the Matter of Lincoln Telephone and Telegraph's Duty to Furnish Interconnection Facilities to MCI Corporation, Declaratory Order, 72 FCC 2d 724, 728-29 ¶ 14 (1979).

[9] Sprint suggests a temporary increase to the multi-line business EUCL charge. Comments of Sprint Corporation filed Jan. 21, 1998 at 2. Because U S WEST's multi-line business EUCL is at the cap in most of its states, this remedy could be effective only if U S WEST were given a waiver to charge above the cap.

decision, it should prescribe a means for the affected LECs to recoup the revenues they will thereby lose.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By: Richard A Karre by

Richard A. Karre
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2791

Its Attorney

Of Counsel,
Dan L. Poole

January 28, 1998

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 28th day of January, 1998, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC.** to be served, via first class United States Mail, postage pre-paid, upon the persons listed on the attached service list.

Kelseau Powe, Jr.

---

*Served via hand-delivery

(CC97149c-COS/DK/ss)

*William E. Kennard
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

*Gloria Tristani
Federal Communications Commission
Room 826
1919 M Street, N.W.
Washington, DC 20554

*Michael K. Powell
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

*Harold Furchtgott-Roth
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

*Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

*A. Richard Metzger, Jr.
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

*James D. Schlichting
Federal Communications Commission
Room 518
1919 M Street, N. W.
Washington, DC 20554

*Judith A. Nitsche
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

*Wanda M. Harris
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

*International Transcription
Services, Inc.
1231 20th Street, N.W.
Washington, DC 20036

Alan Buzacott
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Gail L. Polivy
GTE Service Corporation
Suite 1200
1850 M Street, N.W.
Washington, DC 20036

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
Southwestern Bell Telephone Company
Room 2403
One Bell Plaza
Dallas, TX 75202

George Petrutsas ROSEVILLE
Eric Fishman
Paul J. Feldman
Fletcher, Heald & Hildreth, PLC
11th Floor
1300 North 17th Street
Rosslyn, VA 22209

Emmanuel Staurulakis CONCORD
John Staurulakis, Inc.
6315 Seabrook Road
Seabrook, MD 20706

Jay C. Keithley
Norina Moy
Sprint Local Telephone Companies
11th Floor
1850 M Street, N.W.
Washington, DC 20036-5807

Joe D. Edge PRTC
Tina M. Pidgeon
Drinker, Biddle & Reath, LLP
Suite 901
901 15th Street, N.W.
Washington, DC 20005

M. Robert Sutherland
Richard M. Sbaratta
Rebecca M. Lough
BellSouth Telecommunications, Inc.
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Edward Shakin
Edward D. Young III
Michael E. Glover
Bell Atlantic Telephone Companies
Eighth Floor
1310 North Court House Road
Arlington, VA 22201

Wendy Blueming
Southern New England Telephone Company
227 Church Street
New Haven, CT 06510

Nancy C. Woolf
Pacific Bell and Nevada Bell
Room 1529
140 New Montgomery Street
San Francisco, CA 94105

Michael S. Pabian
Ameritech
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Michael J. Shortley III
Frontier Telephone Companies
180 South Clinton Avenue
Rochester, NY 14646

Robert A. Mazer ALIANT
Albert Shuldiner
Allison S. Yamamoto
Vinson & Elkins, LLP
1455 Pennsylvania Avenue, N.W.
Washington, DC 20004-1008

Benjamin H. Dickens, Jr. CHILLICOTHE
Blooston, Mordkofsky, Jackson
& Dickens
Suite 300
2120 L Street, N.W.
Washington, DC 20037

Mark C. Rosenblum
Peter H. Jacoby
Judy Sello
AT&T Corp.
Room 3245I1
295 North Maple Avenue
Basking Ridge, NJ 07920

Sandra K. Williams
Sprint Corporation
POB 11315
Kansas City, MO 64112

(CC97149c-DK-doc)
Last Update